

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHNNY RAY BROWN,

Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,

Respondents.

2:10-cv-00407-PMP-RJJ

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court following upon Petitioner's response (#9) to the Court's show cause order (#8) directing Petitioner to show cause why the Petition should not be dismissed as time-barred.

Following upon Petitioner's allegation and tendered evidence as to a mental health condition in his equitable tolling argument, the Court will vacate its prior order denying Petitioner's motion for appointment of counsel and appoint counsel in this matter. The Court anticipates at this juncture that, in the order confirming the appointment of the individual attorney, the Court then will allow the represented Petitioner ninety days for counsel to investigate the matter and file a counseled supplemental response to the show cause inquiry. If appointed counsel instead would prefer to file an amended petition before responding to the show cause inquiry, Petitioner will be able to file a motion by the ninety day deadline to modify the scheduling order and establish a deadline for filing an amended petition. The Court then will screen the amended pleading before directing further action.

IT THEREFORE IS ORDERED that the prior minute order (#4) denying petitioner's motion (#2) for appointment of counsel is VACATED and that said motion is GRANTED. The

1 counsel appointed will represent petitioner in all proceedings related to this matter, including
2 any appeals or *certiorari* proceedings, unless allowed to withdraw.

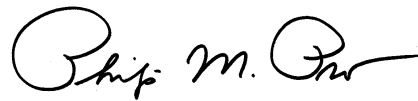
3 IT FURTHER IS ORDERED that the Federal Public Defender for the District of Nevada
4 shall be provisionally appointed as counsel and shall have thirty (30) days to undertake direct
5 representation of Petitioner or to indicate to the Court her office's inability to represent
6 Petitioner in these proceedings. If the Federal Public Defender is unable to represent
7 Petitioner, the Court then shall appoint alternate counsel.

8 IT FURTHER IS ORDERED that the Clerk of the Court shall add Attorney General
9 Catherine Cortez Masto as counsel for Respondents and shall electronically serve this order
10 and ## 6, 8 & 9 upon both the Federal Public Defender and the Attorney General.

11 IT FURTHER IS ORDERED that Respondents' counsel shall enter a notice of
12 appearance herein within twenty (20) days of entry of this order, but no further response shall
13 be required from Respondents until further order of this Court.

14 The Clerk accordingly shall send a copy of this order to the *pro se* petitioner, the
15 Attorney General (by informal electronic service, with a copy of ## 6, 8 & 9), the Federal
16 Public Defender (in the same manner), and the CJA Coordinator for this Division.

17 DATED: July 28, 2010.

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21 PHILIP M. PRO
22 United States District Judge
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